

REMARKS

The above amendment with the following remarks is submitted to be fully responsive to the Office Action of April 18, 2007. Reconsideration of this application in light of the amendment and the allowance of this application are respectfully requested.

Claims 1-31 were pending in the present application prior to the above amendment. In response to the Office Action, claims 1, 3, 4, 16, 18, 19 and 31 have been amended above, and independent claim 32 has been added. Therefore, claims 1-32 are pending in the present application and are believed to be in proper condition for allowance.

Initially, the Applicants acknowledge with appreciation, the Examiner's indication of allowable subject matter in claims 3, 4, 18 and 19 if rewritten in independent form to include all the limitations of the base claim and any intervening claims. In response thereto, these claims have been amended to be in independent form as suggested by the Examiner. In addition, these claims have been amended to rephrase the first instance of the term "from" to "to a position between" so as to more clearly set forth the limitation in view of the second instance of the term "from" in the same limitation. Correspondingly, the allowance of these claims is respectfully requested.

Referring now to the Office Action, claims 1, 2, 5-10, 14-17, 20-25, and 29-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,542,427 to Herpel in view of U.S. Patent No. 5,895,365 to Tomlinson. The Examiner asserts that Herpel discloses all the limitations of independent claims 1, 16, and 31, except for one or more massaging units within the backrest. The Examiner cites Tomlinson as disclosing a massaging bed cushion with one or more massaging units within the backrest. Thus, the Examiner asserts that it would have been obvious to modify the device of Herpel to include the massaging unit system disclosed in Tomlinson, the motivation being to enhance the comfort of the user.

This combination of Herpel and Tomlinson is also relied upon by the Examiner to reject the various dependent claims as being obvious. The Applicants respectfully disagree for the reasons set forth hereinbelow.

It is initially noted that the Herpel reference discloses a vehicle seat assembly with movable armrests that is specifically adapted for use in automobiles. However, Herpel is not a relevant prior art reference in that it is directed to a vehicle seat assembly and not to a bed cushion which is the subject of the present Application. In this regard, the disclosed seat assembly of Herpel includes a seat cushion to which the backrest is attached which makes the Herpel reference non-analogous as explained below.

The Examiner is reminded that in order to properly rely on a reference as a basis for rejection of an applicant's invention, "the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." MPEP 2141.01(a) citing *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). In addition, a reference is "reasonably pertinent if . . . it is one which . . . logically would have commended itself to an inventor's attention in considering his problem." *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992).

As noted above, It is Applicants contention that the vehicle seat disclosed in Herpel is not in the field of the present invention which is directed to bed cushions that do not have a seat. This contention is supported by the fact that problems associated with vehicle seats are not reasonably pertinent to bed cushions, and vice versa, in that they are used in entirely different environments. The problem being addressed by Herpel is in providing movable arm rests that stow into the seat back cushion so that the armrests do not interfere with passenger access and egress from the vehicle passenger compartment. (See Col. 2, lines 26-33). In contrast, the problem being addressed by the bed cushion of the present invention is in providing arm rests that allow users to adjust the angle of recline of the backrest, while also

preventing the backrest from sliding backwards as the armrests contact the floor or bed surface. (See Pg. 4, lines 11-16). This problem addressed by the bed cushion of the present invention is unique to the bed cushion art in that it is attributable to the fact that the bed cushion is seatless. In contrast, vehicle seats do not pose this problem at all since vehicle seats have a bottom seat surface that maintains the relative position of the backrest in order function as a seat. Correspondingly, one trying to address the problem noted above relative to bed cushions clearly would not look to conventional vehicle seats for solutions. As such, references directed to vehicle seats (or any seats having bottom seat surfaces for that matter) are non-analogous references that should not be relied upon in examination of the present invention.

It is also noted that even if Herpel can be considered to be an analogous reference, the Examiner fails to establish proper suggestion in either references to combine Herpel and Tomlinson in the manner suggested. The Examiner merely asserts that it would be desirable to combine these references to enhance the comfort of the user by including a means for imparting control vibratory action to the backrest. The Applicants again disagree in that one of ordinary skill would not be motivated to modify a vehicle seat to include such one or more massaging units within the backrest since operation of such massaging units within a vehicle can be a major source of distraction for the occupants of the vehicle (such as the driver), thereby detracting from the safe operation of the vehicle.

However, to further distinguish the present invention from the cited non-analogous art to Herpel, independent claims 1, 16, and 31 have been specifically amended to recite that the massaging bed rest is seatless, like those shown in Tomlinson as well as U.S. Patent No. 3,273,174 to Cassini that is of record. In addition, these independent claims have been further amended to specifically recite that the two elongate armrests are rotatably coupled directly to the backrest where in the folded position, longitudinal axes of the armrests extend along side edges of the backrest. It is noted that even if Herpel was considered to be a relevant

analogous reference, and there was motivation to combine it with Tomlinson in the manner suggested by the Examiner, such a combination still fails to disclose a massaging bed cushion as now recited in these claims. In particular, it is noted that the vehicle seat assembly of Herpel discloses an armrest which is rotatable relative to the backrest, but is not rotatably coupled directly to the backrest. In this regard, Fig. 1 of Herpel clearly show that the armrests are pivotably connected to a bracket (30) which is then affixed to the backrest (16). (See Fig. 1, Col. 2, lines 26-31). Correspondingly, the combination of these references still fail to result in the massaging bed cushion in which the armrests are rotatably coupled directly to the backrest where in the folded position, longitudinal axes of the armrests extend along side edges of the backrest, as specifically recited in the amended independent claims 1, 16, and 31.

Therefore, in view of the above, the withdrawal of this rejection relative to independent claims 1, 16, and 31 is respectfully requested. In addition, the withdrawal of this rejection relative to the dependent claims 2, 5-10, 14, 15, 17, 20-25, 29, and 30 are also respectfully requested, these claims being patentable at least for the reason of their dependency upon one of the allowable independent claims 1 or 16.

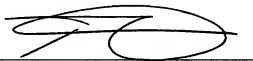
Referring again to the Office Action, claims 11-13 and 26-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Herpel in view of Tomlinson as discussed above, in further view of U.S. Patent 6,682,494 to Sleichter III et al. This rejection is believed to be moot in that these dependent claims are ultimately dependent on allowable independent claims 1 or 16. In addition, it is again noted that Sleichter discloses a seat whereas the subject of the present invention is a massaging bed cushion that is seatless. Correspondingly, the Applicants respectfully contend that Sleichter is a non-analogous reference and should not be relied upon by the Examiner. It is also noted that the Examiner merely asserts that one of ordinary skill would be motivated to combine these three references together

for the purposes of effecting a warming sensation without providing any support or teachings for such a combination.

Finally, independent claim 32 has been added to specifically recite a seatless massaging bed cushion for supporting a person in a sitting position, consisting essentially of a backrest, two elongate armrests rotatably coupled to the backrest where in the folded position, longitudinal axes of the armrests extend along side edges of the backrest, one or more massaging units within the backrest, and a control panel, where the control panel is coupled by electrical communication to the one or more massaging units. Clearly the cited prior art references fails to disclose, teach or otherwise suggest a seatless massaging bed cushion that consists essentially of these components. Therefore, the allowance of this newly added claim is also respectfully requested.

In view of the foregoing, it is submitted that the present application is in condition for allowance and a notice to that effect is respectfully requested. However, if any issue remains after considering this response, the Examiner is invited to call the undersigned to expedite the prosecution and work out any such issue by telephone.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Tim L. Brackett, Jr.', written over a horizontal line.

Tim L. Brackett, Jr.
Registration No. 36,092

NIXON PEABODY LLP
401 9th Street, N.W., Suite 900
Washington, D.C. 20004-2128
(202) 585-8000
(202) 585-8080 (Fax)
Customer No. 22204